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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,956	03/11/2004	Larry E. Wittmeyer JR.	000409-0167	4878

27910 7590 09/19/2007  
STINSON MORRISON HECKER LLP  
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1201 WALNUT STREET, SUITE 2800  
KANSAS CITY, MO 64106-2150

EXAMINER
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AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

MAIL DATE	DELIVERY MODE
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09/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,956	<b>Applicant(s)</b> WITTMAYER, LARRY E.	
	<b>Examiner</b> Nasser Ahmad	<b>Art Unit</b> 1772	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 1-44 and 54-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-53 and 63-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/6/2007 has been entered.

### ***Rejections Maintained***

2. Claims 45-47, 68 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye (5390819) for reasons of record made in the Office Action of 4/13/2006 and maintained in the Office Action of 1/3/2007.
3. Claims 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye in view of James (2415012) for reasons of record made in the Office Action of 4/13/2006 and maintained in the Office Action of 1/3/2007.
4. Claims 63-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye for reasons of record made in the Office Action of 4/13/2006 and maintained in the Office Action of 1/3/2007.

***Response to Arguments***

5. Applicant's arguments filed 7/6/2007 have been fully considered but they are not persuasive.

In response to applicant's arguments that the examiner does not provide support to show that his knowledge was within the level of ordinary skill in the art, applicant is again directed to the Office Action of 1/3/2007, page-3, lines 10-15, wherein the Examiner has explained the position as to why it would have been obvious to one having ordinary skill in the art. Further, applicant has argued without showing any evidence that the stack of Kaye would not function as a toy for recreation of a user. It is noted by the Examiner that the Kaye'839 clearly teaches the structure of the instant independent claim 43. Kaye'839 even teaches the steps recited in claim 43. Since both the Kay'839 and the instant claimed invention are directed to identical stacks and its steps of using, it would have been obvious to one of ordinary skill in the art to use the stack of Kaye'839 for recreation. Additionally, applicant has failed to show that the cannot be used as a toy, something to play with, because it is well known to play with pencils, stacks of repositionable notes, etc.

Applicant also argues that "it is noteworthy that 3M, a leading manufacturer of repositionable notes...Applicant is unaware of any products utilizing or suggesting the use of repositionable notes as a toy in the manner described in the present application". This is not deemed to be convincing because, as explained in the previous Office Actions and hereinabove, the Kaye'839 reference clearly teaches the structure and the steps of the claimed invention. as for its use as a toy, it is also well known to toy with

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products such as stack of notes, pencils, etc. Just because applicant is unaware of any such development does not prevent a user from using said stack of notes as a recreation toy such as recited in the instant claim 43. Additionally, applicant has failed to show that the stack in figures 4 and 6 of Kaye-839 would not provide for recreation to a user.

Thus, in the absence of any evidence to the contrary, it remains the examiner's position that the claimed invention is obvious over the prior art of record discussed hereinabove.

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Nasser Ahmad 9/14/07  
Primary Examiner  
Art Unit 1772

N. Ahmad.  
September 14, 2007.